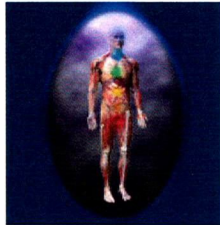


Exhibit 38

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CROWNS AND FIXED PROSTHESES: STATE OF THE ART

Porcelain-fused-to-metal restorations (PFM). After more than 50 years of successful clinical service and innumerable positive research findings regarding the clinical expectations for these restorations, dentists know and trust PFM restorations for single crowns and fixed prostheses. Research investigations show only a low percentage of failures after years of service in the mouth. PFM restorations have some well-known limitations:

- display of a chalky or metallic appearance at the gingival margins of the restoration when the gingiva recedes (this undesirable characteristic can be reduced by using ceramic margins);
- loss of superficial characterizing stains caused by acidic foods and beverages and the resultant change of the restoration to a lighter color than desirable;
- aggressive wear of opposing dentition or restorations (some ceramics are less aggressive than others);
- occasional chipping or fracture of ceramic from the metal substructure.

Many dentists consider PFM to be the standard of care for tooth-colored crowns and fixed prostheses. See table

TABLE

Types of crowns and fixed prostheses manufactured by Glidewell Laboratories, 1997, 2008 and 2009.*			
TYPE OF CROWN OR FIXED PROSTHESIS	PERCENTAGE OF RESTORATIONS MANUFACTURED, ACCORDING TO YEAR (N = 806,000)		
	2009	2008	1997
Porcelain Fused to Metal	58.7	64	72
All Ceramic	32.5	27	15
Zirconia-based†	17.9	NA‡	NA
Lithium Disilicate§	8.9	NA	NA
All Zirconia¶	2.9	NA	NA
Leucite-reinforced Ceramic‡	2.6	NA	NA
Aluminous**	0.2	NA	NA
All Metal	7.0	8.0	12
Resin-based Composite	1.8	1.0	1.0
TOTAL	100	100	100
* Sources: 1997 data: J. Shuck, vice president, Sales and Marketing, Glidewell Laboratories, Newport Beach, Calif., oral communication, May 1998. 2008 data: J. Shuck, vice president, Sales and Marketing, Glidewell Laboratories, oral communication, June 2009. 2009 data: J. Shuck, vice president, Sales and Marketing, and Darryl Withrow, vice president, Operations, Glidewell Laboratories, oral communication, June 2010. † Examples are Cercon (Dentsply Ceramco, York, Pa.) and Lava (3M ESPE, St. Paul, Minn.). ‡ NA: Not applicable. § The sole such product is IPS e.max (Ivoclar Vivadent, Amherst, N.Y.). ¶ One example is BruxZir (Glidewell Laboratories). # One example is IPS Empress (Ivoclar Vivadent). ** One example is Vita In-Ceram (Vita Zahnfabrik, Bad Säckingen, Germany).			

Ceramic restorations. PFM still leads in use, but all-ceramic restorations are growing in popularity. Below is the list and advantages and

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disadvantages

Zirconia-based all-ceramic restorations. Most common uses. These restorations are being used for crowns and short fixed prostheses. Eg Cercon, Lava

Advantages. This material offers good esthetics, moderate strength and a history of nearly 10 years of clinical use with moderate success (ranging from excellent to poor).²²

Disadvantages. The process of layering or pressing ceramic over zirconia still is being refined and improved; these restorations have a high cost. Predictions for future use. Zirconia-based restorations and all-zirconia restorations are the only all-ceramic restorations with suitable strength for fixed pros-theses. Refinements in zirconia-based restorations are producing more predictability and clinical success than when they were introduced. Until and if all-zirconia restorations are proven in long-term service to compete with them, zirconia-based restorations will continue to grow in use instead of PFM restorations.

Lithium disilicate. Most common uses. Restorations of this material (IPS e-max, Ivoclar Vivadent, Amherst, N.Y.) are being used for single crowns, inlays and onlays made by laboratories or milled in the dental office.

Advantages. This material offers excellent esthetics, requires a relatively simple procedure to place, has moderate strength and can be used with conventional cements.

Disadvantages. This material can be used only for single-unit restorations; the concept still needs more clinical observation and research Predictions for future use. The beauty of these restorations, as well as the widespread observation among clinicians that this material does not demonstrate significant breakage in single crowns, onlays and inlays, indicate the possibility for continued and expanded use.

Leucite-reinforced ceramic. Most common uses. This material (among the many brands of which is IPS Empress [Ivoclar Vivadent]) is being used for single crowns, inlays and onlays made in the laboratory or milled in the dental office.

Advantages. This material offers excellent esthetics and is chameleonlike in tooth matching.

Disadvantages. It has less strength than current all-ceramic crown materials; restorations must be bonded. Predictions for future use. These beautiful restorations have been used for many years with relative success. However, I find that among the dentists in my continuing education courses, almost all of those who use leucite-reinforced restorations have experienced some failures. If lithium disilicate restorations prove themselves over the next few years for single-unit restorations, they undoubtedly will reduce the use of leucite-reinforced restorations.

All-ceramic. Most common uses. Although new and relatively unproven, these restorations are being used for single crowns and short-span fixed prostheses. (Among the many brands of this material is **BruxZir, Glidewell Laboratories, Newport Beach, Calif.**)

Advantages. This material offers strength, is monolithic (has no or minimal external layered ceramic) and leads to only minimal wear of opposing dentition.

Disadvantages. This material needs more clinical observation and scientific research to validate its long-term acceptability; it can be monotone and opaque, but improvements are being introduced; numerous clinical studies are in progress, but no published ones are yet available. Predictions for future use. This material needs further research and long-term clinical observation. Until that time, I suggest that clinicians use it

restorations

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cautiously, but it appears to be a promising challenger.

Sitemap

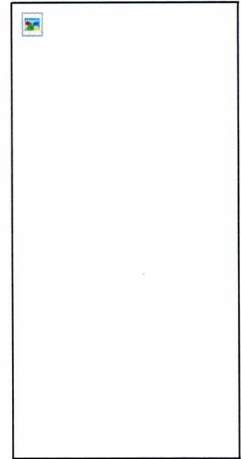
Metal (gold alloy) restorations. Most common uses. I have polled large groups of dentists concerning their feelings about use of cast gold alloy restorations, and as a group they are positive about the continuing long-term success and continued use of these restorations. The most accepted and promoted uses for all-metal full crowns are on first and second maxillary molars and mandibular first molars, as well as inlays and onlays on all posterior teeth.

Advantages. This material offers strength; low wear of opposing teeth; long-term service.

Disadvantages. This material has a high cost and a nonesthetic color.

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GL 216
(page 3 of 3)

Exhibit 39

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8 Email: office@jmhllaw.com

9 Attorneys for Defendant and Counterclaim Plaintiff
10 KEATING DENTAL ARTS, INC.

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 SOUTHERN DIVISION

14 JAMES R. GLIDEWELL DENTAL
15 CERAMICS, INC., DBA
16 GLIDEWELL LABORATORIES,
17 a California corporation,

18 Plaintiff,

19 vs.

20 KEATING DENTAL ARTS, INC.,
21 a California corporation,

22 Defendants.

23 KEATING DENTAL ARTS, INC.
24 a California corporation,

25 Counterclaim-Plaintiff,

26 vs.

27 JAMES R. GLIDEWELL DENTAL
28 CERAMICS, INC., DBA
GLIDEWELL LABORATORIES,
a California corporation, and
DOES 1 THROUGH 5, inclusive,

Counterclaim-Defendants.

Civil Action No.
SA-CV-11-01309-DOC(ANx)

**DEFENDANT/
COUNTERCLAIM PLAINTIFF'S
RESPONSE TO PLAINTIFF/
COUNTERCLAIM
DEFENDANT'S FIRST
REQUEST FOR PRODUCTION
OF DOCUMENTS AND THINGS
NOS. 1-42**

DEFENDANT/ COUNTERCLAIM PLAINTIFF'S RESPONSE TO PLAINTIFF/ COUNTERCLAIM
DEFENDANT'S FIRST REQUEST FOR PRODUCTION OF
DOCUMENTS AND THINGS NOS. 1-42 Exhibit 39

1
2 PROPOUNDING PARTY: GLIDEWELL DENTAL CERAMICS, INC
3 RESPONDING PARTY: KEATING DENTAL ARTS, INC
4 SET NUMBER: ONE
5 TO ALL INTERESTED PARTIES AND TO THEIR ATTORNEYS OF
6 RECORD:

7 Pursuant to Federal Rules of Civil Procedure, Rule 33, Defendant,
8 KEATING DENTAL ARTS, INC. (Defendant) hereby responds to the above-
9 referenced inspection demand as follows:

10
11 **GENERAL OBJECTIONS AND REMARKS**

12 The following apply to these responses, and **all responses below are subject to**
13 **these objections and remarks:**

14 1. Many of the requests appear to request documents and things that, if
15 not identical, are similar and/or overlap (for example, see Requests 11-14). For
16 such situations, although Defendant intends to make a good faith effort to identify
17 the two or more Requests to which the documents and things may be responsive,
18 Defendant does not intend to produce the SAME documents and things more than
19 once. Among other things, this is intended to avoid duplication of documents and
20 things, and to reduce the discovery burden for all parties.

21 2. Examples of such things as described in the preceding paragraph are
22 summaries of sales of various of Defendant's products, materials related to
23 trademark searches and opinions, and promotional materials. To the extent that
24 any such materials are produced and inadvertently not identified as relating to any
25 particular Request, Defendant reserves the right to correct that identification as
26 such time as Defendant becomes aware of same and/or such correction becomes
27 necessary, desirable, or otherwise appropriate.

28 DEFENDANT/ COUNTERCLAIM PLAINTIFF'S RESPONSE TO PLAINTIFF/ COUNTERCLAIM
DEFENDANT'S FIRST REQUEST FOR PRODUCTION OF
DOCUMENTS AND THINGS NOS. 1-42 Exhibit 39

1 3. Discovery and investigation are continuing, and Defendant reserves
2 the right to supplement this response at a later time.

3 4. Defendant and its attorneys have not completed their discovery or
4 preparation for trial, nor have they concluded their analysis of information
5 gathered to date. Consequently, Defendant's responses and objections to this
6 discovery request are based upon information which is presently available to it and
7 its attorneys. Defendant makes these responses and objections to this discovery
8 request without prejudice to its rights to (a) identify and produce evidence of any
9 and all subsequently discovered facts, (b) to modify these responses at a later date
10 that is consistent with the Federal Rules of Civil Procedure, the local rules of this
11 district, and any Scheduling Order entered by this Court, and (c) raise additional
12 objections as Defendant may become aware of same and as may be permitted by
13 relevant law and rules.

14 5. Defendant objects to these requests, and to each and every request, to
15 the extent that it calls for the production/disclosure of confidential
16 documents/information involving trade secrets or other proprietary or confidential
17 information. Defendant has previously advised Plaintiff that Defendant intends to
18 utilize the Confidentiality Order entered in this lawsuit to designate such
19 materials, and to otherwise avail itself of the protections afforded thereby.

20 6. Defendant objects to these requests, and to each and every request, to
21 the extent that it is not reasonably limited in scope or in time.

22 7. Defendant objects to these requests, and to each and every request, to
23 the extent that it is not reasonably particular from the standpoint of the responding
24 party, and/or not bearing a sufficient relationship to the manner in which records
25 are kept, thereby requiring responding party to determine, at the risk of sanctions,
26 which of its records fit a demand that requests everything fitting a specific topic or
27 broad description.

1 8. Defendant objects to these requests, and to each and every request, to
2 the extent that the request is oppressive and burdensome because it is vague,
3 ambiguous, and/or unintelligible so as to make a response impossible without
4 speculation as to the meaning of the request.

5 9. Defendant objects to these requests, and to each and every request, to
6 the extent that it is unduly broad, unduly burdensome, and oppressive insofar as it
7 calls for “all” and/or “each” and/or “every” possible matter and/or related piece of
8 evidence or information, when a more limited request is all that might be relevant
9 to the subject matter of the within litigation.

10 10. Defendant objects to these requests, and to each and every request, to
11 the extent that they are unduly burdensome in view of (a) their likely benefit, (b)
12 the needs of the case, (c) the amount in controversy, (d) the parties' resources,
13 and/or (e) the importance of the issues at stake.

14 11. Defendant objects to these requests, and to each and every request, to
15 the extent that it violates the attorney-client and attorney work product privileges
16 (and/or any other relevant privilege) and therefore is protected from disclosure.

17 12. Defendant objects to these requests, and to each and every request, to
18 the extent that collectively they exceed the discovery limits that may be applicable
19 under relevant law and/or rule.

20 13. Defendant objects to these requests, and to each and every request, to
21 the extent that they request information that is irrelevant and/or is not reasonably
22 calculated to lead to the discovery of admissible evidence.

23 14. Defendant objects to these requests, and to each and every request, to
24 the extent that they seek information that is unreasonably cumulative or
25 duplicative or obtainable from Plaintiff's own files and/or from some other source
26 that is more convenient, less burdensome, or less expensive.

1 15. Defendant objects to these requests, and to each and every request, to
2 the extent that they seek documents that already have been made of record in this
3 lawsuit (in the previous filings by the parties and/or via Defendant's previous
4 discovery responses) and/or are as readily discoverable by Plaintiff from
5 reviewing its own documents and things
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RESPONSES TO PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS DOCUMENTS AND THINGS, SET ONE

REQUEST NO. 1:

All DOCUMENTS and THINGS RELATING TO the selection of the designation KDZ BRUXER by the DEFENDANT.

RESPONSE:

Subject to the objections and remarks set forth above, and to the extent that any such non-privileged documents and/or things exist and can be located through reasonable efforts, responsive documents and/or things will be produced.

ALSO, please see responses to Request Nos. 7, 26, and others below.

REQUEST NO. 2:

All DOCUMENTS and THINGS RELATING TO the adoption of the designation KDZ BRUXER by the DEFENDANT.

RESPONSE:

Subject to the objections and remarks set forth above, and to the extent that any such non-privileged documents and/or things exist and can be located through reasonable efforts, responsive documents and/or things will be produced.

ALSO, please see responses to Request Nos. 7, 26, and others below.

REQUEST NO. 3:

All DOCUMENTS and THINGS RELATING TO all uses of the designation KDZ BRUXER by the DEFENDANT.

DEFENDANT/ COUNTERCLAIM PLAINTIFF'S RESPONSE TO PLAINTIFF/ COUNTERCLAIM DEFENDANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS NOS. 1-42 Exhibit 39

1 RESPONSE:

2 Subject to the objections and remarks set forth above, and to the extent that any
3 such non-privileged documents and/or things exist and can be located through
4 reasonable efforts, responsive documents and/or things will be produced.

5
6 ALSO, please see response to Request No. 6 below.

7
8 REQUEST NO. 4:

9 All DOCUMENTS and THINGS RELATING TO all proposed uses of the
10 designation KDZ BRUXER by the DEFENDANT.

11 RESPONSE:

12 Subject to the objections and remarks set forth above, and to the extent that any
13 such non-privileged documents and/or things exist and can be located through
14 reasonable efforts, responsive documents and/or things will be produced.

15
16 ALSO, please see response to Request No. 6 below.

17
18 REQUEST NO. 5:

19 All DOCUMENTS and THINGS RELATING TO all GOODS OFFERED
20 FOR SALE under the designation KDZ BRUXER by the DEFENDANT.

21 RESPONSE:

22 Subject to the objections and remarks set forth above, and to the extent that any
23 such non-privileged documents and/or things exist and can be located through
24 reasonable efforts, responsive documents and/or things will be produced.

25
26 ALSO, please see response to Request No. 6 below.

1 REQUEST NO. 6:

2 All DOCUMENTS and THINGS RELATING TO all proposed GOODS
3 OFFERED FOR SALE under the designation KDZ BRUXER by the
4 DEFENDANT.

5 RESPONSE:

6 Subject to the objections and remarks set forth above, and to the extent that any
7 such non-privileged documents and/or things exist and can be located through
8 reasonable efforts, responsive documents and/or things will be produced.

9
10 In addition to the general objections and remarks set forth above, Defendant
11 specifically objects to this request as being vague, oxymoronic, and
12 incomprehensible, as to “proposed GOODS OFFERED FOR SALE” (if GOODS
13 have been OFFERED FOR SALE, how can they be only PROPOSED?). In a
14 show of good faith, Defendant’s response will be based on the goods that
15 Defendant HAS offered for sale.

16
17 REQUEST NO. 7:

18 All DOCUMENTS and THINGS RELATING TO U.S. Patent and
19 Trademark Filings for KDZ BRUXER filed by DEFENDANT with the U.S. Patent
20 & Trademark Office on April 5, 2011, including but not limited to, all
21 DOCUMENTS and THINGS (a) relied upon by the DEFENDANT to prepare the
22 trademark filing, (b) formed the basis for the statements made by the
23 DEFENDANT in the trademark filing, and (c) RELATING TO communications
24 that lead [sic] to the filing of the KDZ BRUXER Application by DEFENDANT.

25 RESPONSE:

1 Subject to the objections and remarks set forth above, and to the extent that any
2 such non-privileged documents and/or things exist and can be located through
3 reasonable efforts, responsive documents and/or things will be produced.

4
5 In addition to the general objections and remarks set forth above, Defendant
6 specifically objects to this request to the extent that it calls for documents and/or
7 things that are protected by the attorney/client privilege.

8
9 REQUEST NO. 8

10 All DOCUMENTS and THINGS RELATING TO all communications
11 concerning the use of the designation KDZ BRUXER, including variations
12 thereof, between the DEFENDANT and any third party.

13 RESPONSE:

14 Subject to the objections and remarks set forth above, and to the extent that any
15 such non-privileged documents and/or things exist and can be located through
16 reasonable efforts, responsive documents and/or things will be produced.

17
18 In addition to the general objections and remarks set forth above, Defendant
19 specifically objects to this request as being vague, overbroad, and unduly
20 burdensome. Among other things, “variations thereof” is unclear as to its scope,
21 and “all communications” with “any third party” are so broad as to be unduly
22 burdensome and to encompass attorney/client privileged communications.

23
24 REQUEST NO. 9

25 All DOCUMENTS and THINGS RELATING TO all AGREEMENTS
26 concerning any use of KDZ BRUXER, including variations thereof, between the
27 DEFENDANT and any third party.

1 RESPONSE:

2 Subject to the objections and remarks set forth above, and to the extent that the
3 request is presently understood, no such relevant documents and/or things could
4 be located through Defendant's reasonable efforts (other than Defendant's
5 placement of advertising with third parties, which is the subject of other pending
6 requests to which Defendant is responding as indicated elsewhere herein, such as
7 in responses to Request Nos. 10 and 14 herein).

8
9 REQUEST NO. 10

10 All DOCUMENTS and THINGS RELATING TO all AGREEMENTS
11 concerning any GOODS OFFERED FOR SALE under the designation KDZ
12 BRUXER between the DEFENDANT and any third party.

13 RESPONSE:

14 Subject to the objections and remarks set forth above, and to the extent that any
15 such non-privileged documents and/or things exist and can be located through
16 reasonable efforts, responsive documents and/or things will be produced.

17
18 REQUEST NO. 11

19 All DOCUMENTS and THINGS RELATING TO all OFFERS OF SALE by
20 any entity other than DEFENDANT for GOODS under the designation KDZ
21 BRUXER.

22 RESPONSE:

23 Subject to the objections and remarks set forth above, and as the request is
24 presently understood, no such relevant documents and/or things could be located
25 through Defendant's reasonable efforts.

26
27 REQUEST NO. 12

28 DEFENDANT/ COUNTERCLAIM PLAINTIFF'S RESPONSE TO PLAINTIFF/ COUNTERCLAIM
DEFENDANT'S FIRST REQUEST FOR PRODUCTION OF
DOCUMENTS AND THINGS NOS. 1-42 Exhibit 39

Representative specimens of all PROMOTIONAL MATERIALS RELATING TO any GOODS OFFERED FOR SALE under the designation KDZ BRUXER.

RESPONSE:

Subject to the objections and remarks set forth above, and to the extent that any such non-privileged documents and/or things exist and can be located through reasonable efforts, responsive documents and/or things will be produced.

REQUEST NO. 13

All DOCUMENTS and THINGS RELATING TO PROMOTIONAL MATERIALS used in connection with any GOODS OFFERED FOR SALE under the designation KDZ BRUXER by the DEFENDANT.

RESPONSE:

Subject to the objections and remarks set forth above, and to the extent that any such non-privileged documents and/or things exist and can be located through reasonable efforts, responsive documents and/or things will be produced.

REQUEST NO. 14

All DOCUMENTS and THINGS RELATING TO PROMOTIONAL MATERIALS that have been proposed to be used in connection with any SERVICE OFFERED FOR SALE under the designation KDZ BRUXER by the DEFENDANT.

RESPONSE:

Subject to the objections and remarks set forth above, and as the request is presently understood, no such relevant documents and/or things could be located through Defendant's reasonable efforts.

1 REQUEST NO. 15

2 A representative specimen of each and every use made of the designation
3 KDZ BRUXER by the DEFENDANT, including, but not limited to, a
4 representative specimen of each GOOD provided, including its brochure,
5 PROMOTIONAL MATERIALS, advertising, or accompanying material, sold
6 under the designation KDZ BRUXER.

7 RESPONSE:

8 Subject to the objections and remarks set forth above, and to the extent that any
9 such non-privileged documents and/or things exist and can be located through
10 reasonable efforts, responsive documents and/or things will be produced.

11
12 REQUEST NO. 16

13 A representative specimen of each and every proposed use of the
14 designation KDZ BRUXER by the DEFENDANT, including, but not limited to, a
15 representative specimen of each GOOD provided, including its packaging or
16 accompanying material, sold under the designation KDZ BRUXER.

17 RESPONSE:

18 Subject to the objections and remarks set forth above, and to the extent that any
19 such non-privileged documents and/or things exist and can be located through
20 reasonable efforts, responsive documents and/or things will be produced.

21
22 In addition to the general objections and remarks set forth above, Defendant
23 specifically objects to this request as being vague, oxymoronic, and
24 incomprehensible, as to “proposed use” (if the use is PROPOSED instead of
25 ACTUAL, how can there be any “representative specimen of each GOOD
26 provided, including its packaging or accompanying material, sold under the
27

1 designation KDZ BRUXER”?). In a show of good faith, Defendant’s response
2 will be based on the goods that Defendant HAS offered for sale.

3
4 REQUEST NO. 17

5 All DOCUMENTS and THINGS RELATING TO all controls (e.g. type,
6 quality, etc.) over the SERVICES OFFERED FOR SALE under the designation
7 KDZ BRUXER by the DEFENDANT.

8 RESPONSE:

9 Subject to the objections and remarks set forth above, and as the request is
10 presently understood, no such relevant documents and/or things could be located
11 through Defendant’s reasonable efforts.

12
13 REQUEST NO. 18

14 All DOCUMENTS and THINGS RELATING TO all controls (e.g., type,
15 quality, etc.) over the GOODS proposed to be OFFERED FOR SALE under the
16 designation KDZ BRUXER by the DEFENDANT.

17 RESPONSE:

18 Subject to the objections and remarks set forth above, and to the extent that any
19 such non-privileged documents and/or things exist and can be located through
20 reasonable efforts, responsive documents and/or things will be produced.

21
22 REQUEST NO. 19

23 All DOCUMENTS and THINGS RELATING TO any likelihood of
24 confusion between KDZ BRUXER and any other designation.

1 RESPONSE:

2 Subject to the objections and remarks set forth above, and to the extent that any
3 such non-privileged documents and/or things exist and can be located through
4 reasonable efforts, responsive documents and/or things will be produced.
5

6 In addition, Defendant objects to the phrase “any other designation” as being
7 vague and ambiguous, especially when combined (as Plaintiff has done in this
8 Request) with the legal concept/conclusion of “likelihood of confusion”. As
9 previously noted, Defendant does not believe that there IS any “likelihood of
10 confusion” as between the parties’ trademarks that are at issue in this lawsuit. In a
11 show of good faith, Defendant intends to produce records of any and all
12 communications received by Defendant that include the term BRUXIR,
13 BRUXZER, and/or BRUXZIR, along with documents and things that confirm that
14 the inclusion of those terms are not evidence of any “confusion” by the customers
15 (dentists) ordering Defendant’s products. Among other things, these additional
16 documents and things confirm facts such as:
17

- 18 a) The source of those communications were virtually all existing customers of
19 Defendant,
20 b) Virtually all of those communications were made on Defendant’s Rx form,
21 c) All or virtually all of those communications were sent to Defendant using
22 Defendant’s UPS shipping label/number,
23 d) All or virtually all of those communications were sent to Defendant after
24 having called Defendant to arrange a pickup of the order by UPS,
25 e) Many clearly used the term BRUXZIR generically, such as by writing the
26 phrase “BRUXZIR or equivalent” or “BRUXZIR or similar”, and
27

1 f) 100% of those customers both (1) knew that they were contacting
2 Defendant and (2) intended to order a full contour zirconia product from
3 Defendant,

4
5 Please see also Defendant's response to Request No. 30 below.
6

7 REQUEST NO. 20

8 All DOCUMENTS and THINGS having any opinions RELATING TO the
9 availability of use of the designation KDZ BRUXER by the DEFENDANT.

10 RESPONSE:

11 Subject to the objections and remarks set forth above, and to the extent that any
12 such non-privileged documents and/or things exist and can be located through
13 reasonable efforts, responsive documents and/or things will be produced.
14

15 REQUEST NO. 21

16 All DOCUMENTS and THINGS RELATING TO the value of the
17 designation KDZ BRUXER to the DEFENDANT.

18 RESPONSE:

19 Subject to the objections and remarks set forth above, and as the request is
20 presently understood, no such relevant documents and/or things could be located
21 through Defendant's reasonable efforts.
22

23 REQUEST NO. 22

24 All DOCUMENTS and THINGS RELATING TO the value of any goodwill
25 for the DEFENDANT alleged to be associated with the designation KDZ
26 BRUXER.
27

1 RESPONSE:

2 Subject to the objections and remarks set forth above, and as the request is
3 presently understood, no such relevant documents and/or things could be located
4 through Defendant's reasonable efforts.

5
6 REQUEST NO. 23

7 All DOCUMENTS and THINGS RELATING TO the expenditures made by
8 the DEFENDANT to promote GOODS under the designation KDZ BRUXER
9 including, but not limited to, all summaries of such expenditures.

10 RESPONSE:

11 Subject to the objections and remarks set forth above, and to the extent that any
12 such non-privileged documents and/or things exist and can be located through
13 reasonable efforts, relevant responsive information already has been produced as
14 part of Defendant's earlier response to Plaintiff's First Interrogatories. If Plaintiff
15 desires additional materials, Defendant will consider such a request, but absent
16 same, Defendant respectfully submits that the previous responses were sufficient.

17
18 REQUEST NO. 24

19 All summaries of expenditures made by the DEFENDANT to promote
20 GOODS sold by the DEFENDANT under the designation KDZ BRUXER.

21 RESPONSE:

22 Subject to the objections and remarks set forth above, and to the extent that any
23 such non-privileged documents and/or things exist and can be located through
24 reasonable efforts, relevant responsive information already has been produced as
25 part of Defendant's earlier response to Plaintiff's First Interrogatories. If Plaintiff
26 desires additional materials, Defendant will consider such a request, but absent
27 same, Defendant respectfully submits that the previous responses were sufficient.

1
2 REQUEST NO. 25

3 All DOCUMENTS and THINGS summarizing the dollar volume of sales by
4 the DEFENDANT of all GOODS sold by the DEFENDANT under the designation
5 KDZ BRUXER.

6 RESPONSE:

7 Subject to the objections and remarks set forth above, and to the extent that any
8 such non-privileged documents and/or things exist and can be located through
9 reasonable efforts, relevant responsive information already has been produced as
10 part of Defendant's earlier response to Plaintiff's First Interrogatories. If Plaintiff
11 desires additional materials, Defendant will consider such a request, but absent
12 same, Defendant respectfully submits that the previous responses were sufficient.

13
14 REQUEST NO. 26:

15 All DOCUMENTS and THINGS RELATING TO the first use, including its
16 creation, adoption, and alleged first use in commerce of the designation KDZ
17 BRUXER.

18 RESPONSE:

19 Subject to the objections and remarks set forth above, and to the extent that any
20 such non-privileged documents and/or things exist and can be located through
21 reasonable efforts, responsive documents and/or things will be produced.

22
23 REQUEST NO. 27:

24 All DOCUMENTS and THINGS RELATING TO any plan by the
25 DEFENDANT to expand (e.g., geographically, lines of PRODUCTS, etc.) its
26 OFFER OF GOODS FOR SALE under the designation KDZ BRUXER.

27 RESPONSE:

28 DEFENDANT/ COUNTERCLAIM PLAINTIFF'S RESPONSE TO PLAINTIFF/ COUNTERCLAIM
DEFENDANT'S FIRST REQUEST FOR PRODUCTION OF
DOCUMENTS AND THINGS NOS. 1-42 Exhibit 39

1 Subject to the objections and remarks set forth above, and as the request is
2 presently understood, no such relevant documents and/or things could be located
3 through Defendant's reasonable efforts.

4
5 REQUEST NO. 28:

6 All DOCUMENTS and THINGS RELATING TO any trademark search
7 conducted by the DEFENDANT RELATING TO the designation KDZ
8 BRUXER.

9 RESPONSE:

10 Subject to the objections and remarks set forth above, and to the extent that any
11 such non-privileged documents and/or things exist and can be located through
12 reasonable efforts, responsive documents and/or things will be produced.

13 REQUEST NO. 29:

14 All DOCUMENTS and THINGS RELATING TO any study concerning the
15 designation KDZ BRUXER including, but not limited to marketing study, focus
16 group study, poll, survey, etc.

17 RESPONSE:

18 Subject to the objections and remarks set forth above, and as the request is
19 presently understood, no such relevant documents and/or things could be located
20 through Defendant's reasonable efforts.

21
22 REQUEST NO. 30:

23 All DOCUMENTS and THINGS RELATING TO any instance of actual
24 confusion in connection with the use of the designation KDZ BRUXER.

25 RESPONSE:

1 Subject to the objections and remarks set forth above, and to the extent that any
2 such non-privileged documents and/or things exist and can be located through
3 reasonable efforts, responsive documents and/or things will be produced.
4

5 As indicated in Response to Request No. 19 above, Defendant does not believe
6 that there IS any “likelihood of confusion” as between the parties’ trademarks that
7 are at issue in this lawsuit, and Defendant also is not aware of any “actual
8 confusion.” In a show of good faith, Defendant intends to produce records of any
9 and all communications received by Defendant that include the term BRUXIR,
10 BRUXZER, and/or BRUXZIR, along with documents and things that confirm that
11 the inclusion of those terms are not evidence of any “confusion” by the customers
12 (dentists) ordering Defendant’s products. Among other things, these additional
13 documents and things confirm facts such as:
14

- 15 a) The source of those communications were virtually all existing customers of
16 Defendant,
- 17 b) Virtually all of those communications were made on Defendant’s Rx form,
- 18 c) All or virtually all of those communications were sent to Defendant using
19 Defendant’s UPS shipping label/number,
- 20 d) All or virtually all of those communications were sent to Defendant after
21 having called Defendant to arrange a pickup of the order by UPS,
- 22 e) Many clearly used the term BRUXZIR generically, such as by writing the
23 phrase “BRUXZIR or equivalent” or “BRUXZIR or similar”, and
- 24 f) 100% of those customers both (1) knew that they were contacting
25 Defendant and (2) intended to order a full contour zirconia product from
26 Defendant,
27

1 Please see also Defendant's response to Request No. 19 above.

2
3 REQUEST NO. 31:

4 All DOCUMENTS and THINGS RELATING TO the DEFENDANT 'S first
5 knowledge of the PLAINTIFF.

6 RESPONSE:

7 Subject to the objections and remarks set forth above, and as the request is
8 presently understood, no such relevant documents and/or things could be located
9 through Defendant's reasonable efforts.

10
11 In addition, Defendant objects to the phrase "knowledge of the Plaintiff" as being
12 ambiguous and/or irrelevant. In a show of good faith, Defendant acknowledges
13 that, at the time of Defendant's founding circa 2002, at least certain of
14 Defendant's corporate officers "knew" of the existence of Plaintiff.

15
16 REQUEST NO. 32:

17 All DOCUMENTS and THINGS RELATING TO all customers' feedback
18 (e.g., complaints, comments, or claims for relief) concerning GOODS that have
19 been sold by the DEFENDANT under the designation KDZ BRUXER.

20 RESPONSE:

21 Subject to the objections and remarks set forth above, and to the extent that any
22 such non-privileged documents and/or things exist and can be located through
23 reasonable efforts, responsive documents and/or things will be produced.

24
25 REQUEST NO. 33:

26 All DOCUMENTS and THINGS that identify the purchases of the
27 DEFENDANT'S GOODS OFFERED FOR SALE under the designation KDZ

BRUXER, including, but not limited to, information relating to the location of each branch, store, etc. where the GOODS are OFFERED FOR SALE.

RESPONSE:

Subject to the objections and remarks set forth above, Defendant notes that the request is so broad as to potentially include information whose disclosure is prohibited by HIPPA restrictions and guidelines and/or other laws and regulations. For example, as currently understood, the request may encompass documents and things that could disclose the name of the dentist and/or the dentist's patient, the particular tooth and treatment being undertaken, etc. In a show of good faith, Defendant notes that Defendant's KDZ BRUXER product is only offered for sale by Defendant, and that there are no "branches, stores, etc." besides Defendant's home office in Irvine, California.

REQUEST NO. 34:

All DOCUMENTS and THINGS that support any of the allegations made by the DEFENDANT in its Answer to the Complaint filed in this Action by PLAINTIFF.

RESPONSE:

Subject to the objections and remarks set forth above, Defendant notes that extensive quantities and types of materials already have been made of record in Defendant's filings with the Court (served on Plaintiff), and Defendant does not intend to repeat production of those materials. In addition, Defendant objects to the request as being overbroad and premature; discovery and review and analysis of the issues and supporting "documents and things" is ongoing, and Defendant expressly reserves the right to produce further responsive documents and things as they may become available and/or as Defendant becomes aware of their relevance to the present lawsuit.

1
2 REQUEST NO. 35:

3 All DOCUMENTS and THINGS that have been relied upon to provide any
4 of the DEFENDANT'S answers to PLAINTIFF'S First Set of Interrogatories to the
5 DEFENDANT.

6 RESPONSE:

7 Subject to the objections and remarks set forth above, and to the extent that any
8 such non-privileged documents and/or things exist and can be located through
9 reasonable efforts, responsive documents and/or things will be produced.
10

11 REQUEST NO. 36:

12 All DOCUMENTS and THINGS relating to communications between
13 DEFENDANT Keating and PLAINTIFF Glidewell.

14 RESPONSE:

15 Subject to the objections and remarks set forth above, and as the request is
16 presently understood, no such non-privileged relevant documents and/or things
17 could be located through Defendant's reasonable efforts. Among other things,
18 Defendant notes that the only responsive documents of which Defendant is aware
19 already have been made of record in this lawsuit (in the previous filings by the
20 parties) and/or are as readily discoverable by Plaintiff from reviewing its own
21 documents and things.
22

23 REQUEST NO. 37:

24 All DOCUMENTS and THINGS relating to communications between
25 DEFENDANT Keating and current or past employees of PLAINTIFF Glidewell.
26
27

1 RESPONSE

2 Defendant is not aware of the identity of all of Plaintiff's current or past
3 employees, and therefore cannot respond to this request. If Plaintiff will produce a
4 list of such employees, Defendant will undertake reasonable efforts to further
5 respond to this request. Defendant further specifically objects to this Request as
6 calling for information that is neither relevant to the matters at issue nor likely to
7 lead to the discovery of relevant information.

8
9 REQUEST NO. 38:

10 All DOCUMENTS and THINGS relating to communications between
11 DEFENDANT Keating and current or past customers of PLAINTIFF Glidewell.

12 RESPONSE:

13 Defendant is not aware of the identity of Plaintiff's current or past customers, and
14 therefore cannot respond to this request. If Plaintiff will produce a list of such
15 customers, Defendant will undertake reasonable efforts to further respond to this
16 request.

17
18 REQUEST NO. 39:

19 All DOCUMENTS and THINGS relating to communications between
20 DEFENDANT Keating and current or past distributors of PLAINTIFF Glidewell's
21 products or services.

22 RESPONSE:

23 Defendant is not aware of the identity of Plaintiff's current or past distributors,
24 and therefore cannot respond to this request. If Plaintiff will produce a list of such
25 distributors, Defendant will undertake reasonable efforts to further respond to this
26 request.

27
28 REQUEST NO. 40:

DEFENDANT/ COUNTERCLAIM PLAINTIFF'S RESPONSE TO PLAINTIFF/ COUNTERCLAIM
DEFENDANT'S FIRST REQUEST FOR PRODUCTION OF
DOCUMENTS AND THINGS NOS. 1-42 Exhibit 39

1 All DOCUMENTS and THINGS relating to communications between
2 DEFENDANT Keating and all third parties on the subjects of PLAINTIFF
3 Glidewell, Glidewell's trademarks or Glidewell 's products or services.

4 RESPONSE:

5 Subject to the objections and remarks set forth above, and as the request is
6 presently understood, no such non-privileged relevant documents and/or things
7 could be located through Defendant's reasonable efforts.

8
9 In addition, Defendant objects to the scope of the Request, as being overbroad,
10 unduly burdensome, and calling for information that is neither relevant to the
11 matters at issue nor likely to lead to the discovery of relevant information.

12
13 REQUEST NO. 41:

14 All DOCUMENTS relating to any form of insurance upon which
15 DEFENDANT Keating has made a claim relating to this Action.

16 RESPONSE:

17 Subject to the objections and remarks set forth above, and to the extent that any
18 such non-privileged documents and/or things exist and can be located through
19 reasonable efforts, responsive documents and/or things will be produced.

20
21 REQUEST NO. 42:

22 ALL DOCUMENTS and things pertaining to DEFENDANT Keating's
23 purchase of materials from third parties that are used in the production of any
24 products sold under the KDZ BRUXER trademark.

1 RESPONSE:

2 Subject to the objections and remarks set forth above, and to the extent that any
3 such non-privileged documents and/or things exist and can be located through
4 reasonable efforts, responsive documents and/or things will be produced.
5
6
7

8 Dated: 2012-05-18

/J. Mark Holland/

J. Mark Holland

J. MARK HOLLAND & ASSOCIATES

Attorney for Defendant and Counterclaim

KEATING DENTAL ARTS, INC., a

California corporation

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PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 3 San Joaquin Plaza, Suite 210, Newport Beach, California 92660.

On the date indicated below, I served the following documents (described as DEFENDANT/ COUNTERCLAIM PLAINTIFF'S RESPONSE TO PLAINTIFF/ COUNTERCLAIM DEFENDANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS NOS. 1-42) on all other parties and/or their attorney(s) of record to this action, as listed here:

Attorneys for Plaintiff JAMES R. GLIDEWELL DENTAL CERAMICS, INC., DBA GLIDEWELL LABORATORIES:

Leonard Tachner, Esq.	Email: tachlaw@aol.com
17961 Sky Park Circle, Suite 38-E	Telephone: 949-752-8525
Irvine, California 92614	Facsimile: 949-955-2415

I accomplished this service as indicated below:

☐ (BY MAIL) I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. By placing a true copy thereof in a sealed envelope, addressed to the person at the address set forth above by postage prepaid United States First Class mail, which envelope shall be deposited with the United States Postal Service this same day in the ordinary course of business at our Firm's office address in Newport Beach, California.

☐ (BY OVERNIGHT DELIVERY SERVICE) I served the foregoing document by Federal Express, an express service carrier which provides overnight delivery, as follows. I placed true copies of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed to each interested party as set forth above, and I paid or provided for payment of the fees for overnight delivery.

☐ (BY FACSIMILE) I caused such documents to be delivered via facsimile to the offices of the addressee(s) at the indicated fax numbers.

☒ (BY EMAIL) I caused such documents to be delivered via email to the offices of the addressee(s) at the indicated email addresses.

☐ (BY PERSONAL SERVICE) I caused such document(s) to be delivered by hand to the addressee(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 18, 2012, at Newport Beach, California.

/J. Mark Holland/

J. Mark Holland

DEFENDANT/ COUNTERCLAIM PLAINTIFF'S RESPONSE TO PLAINTIFF/ COUNTERCLAIM DEFENDANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS NOS. 1-42 Exhibit 39

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